

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-207441

DATE: June 2, 1983

MATTER OF: Anderson and Wood Construction Company, Inc.

DIGEST:

1. Protest against award of subcontract on behalf of Government by Department of Energy prime contractor is appropriate for GAO review under standards of Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Nonunion protester, whose bid prime contractor did not open, is interested party, in particular circumstances, for purposes of protesting requirement for subcontractors to have union agreement notwithstanding that protester withdrew its bid.
2. GAO will consider protest challenging requirement by Department of Energy prime contractor for subcontractors to have agreement with onsite unions since significant issue is involved.
3. Requirement by Department of Engergy prime contractor for subcontractors to have agreement with onsite unions neither unduly restricts competition nor conflicts with Federal norm so long as prime contractor permits nonunion firms to compete for contracts and affords them opportunity to seek prehire agreements under the National Labor Relations Act.

Anderson and Wood Construction Company, Inc. (Anderson), protests a subcontract procurement conducted on behalf of the Department of Energy (DOE) by the Morrison-Knudsen Company, Inc. (MK), a DOE construction management contractor. All parties agree that this subcontract protest is appropriate for our review under our decision in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

We deny the protest.

MK initiated this procurement in February 1982 by issuing a "request for proposals" (RFP) for the upgrading of an electrical substation at DOE's Idaho National Engineering Laboratory (INEL). The RFP stated that proposals were due on March 18, 1982, "after which the public bid opening will promptly commence." (In view of this language, we will treat this as an advertised procurement.) MK solicited bids from 11 firms and also provided copies of the solicitation to several contractor associations.

MK is party to a collective-bargaining agreement with the unions in the INEL area. The agreement stipulates, in part, that MK will not subcontract any work at the INEL site to any contractor which is not also party to a union agreement. This agreement was not mentioned in the solicitation.

During the first week of March 1982, Anderson contacted MK to obtain a copy of the solicitation. This contact precipitated written advice to Anderson from an MK representative that Anderson "would not be accepted" unless MK received Anderson's "commitment to use union personnel." On March 17, Anderson representatives met with officials of the local union of the International Brotherhood of Electrical Workers (IBEW). As we understand the meeting, the local asked that Anderson accept a companywide bargaining agreement applicable anywhere within the local's jurisdiction, while Anderson sought an arrangement applicable only to the site. The meeting ended without agreement.

Anderson submitted its bid and a sealed letter on March 18. At the appointed time, MK's representative opened and read the other bids and then opened Anderson's letter. The letter stated that Anderson fully intended to abide by all INEL practices but that Anderson had been unsuccessful in working out an accord with the local union; therefore, the company "[found] it very difficult to comply with [MK's] 'union-only' request." After reading Anderson's letter, MK's representative announced that the public bid opening was closed, but did not open Anderson's bid. DOE insists, however, that MK informed Anderson that it would "take Anderson's bid under advisement." After some discussion, Anderson sought and obtained the return of its unopened bid.

Anderson protested orally to MK on April 6, 1982, and was advised by MK that its protest would have to be filed in writing within 10 days in order to be considered. Anderson

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DECISION



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FILE: B-209038

DATE: June 2, 1983

MATTER OF: Adam II, Ltd.

DIGEST:

Protest against propriety of cost comparison performed under Office of Management and Budget Circular A-76 is dismissed where protester failed to exhaust administrative review procedure.

Adam II, Ltd. (Adam II), protests the determination by Langley Air Force Base to perform military family housing maintenance in-house rather than through contracting under invitation for bids F44600-82-B-0047.

We dismiss the protest.

Adam II protested here on the basis of oral advice that the work would continue to be performed in-house based upon a revision of the in-house cost estimate. Adam II's protest was that the cost estimate was revised untimely. While the protest was pending, the contracting agency issued the revised cost estimate and advised bidders of the time-frame for challenging the cost comparison administratively. Adam II did not accept the opportunity provided to challenge the cost comparison administratively.

When an administrative review procedure concerning an Office of Management and Budget Circular A-76 cost comparison is available, we dismiss a protest where the protester has failed to exhaust the procedure. Apex International Management Services, Inc., B-207879, July 12, 1982, 82-2 CPD 42; Urban Enterprises, B-201619, February 17, 1981, 81-1 CPD 101.

for J. A. Barclay, Jr.
Harry R. Van Cleve
Acting General Counsel

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